

## **R E M A R K S**

Claims 1 and 5-14 are in this application. Claims 1 and 10 have been amended to delete the phrase “up to 70% homology”.

Claims 1 and 10 have been amended to define that a TIM sequence is located on both sides of TAM.

Claim 9 has been amended to delete the specific selection markers and reporter genes. The specific selection markers and reporter genes are now the subject of claims 11 and 12, respectively. Claim 9 has also been amended to delete reference to the use of the plant transformation vectors for the development of a transgenic plant. Claims 13-15 have been added which define a transgenic plant that has been transformed by the plant transformation vector of claim 9, 11 or 12 respectively.

According to the Office Action, claims 1 and 3-10 are rejected under USC 112, first paragraph as failing to comply with the written description requirement because of the use of the phrase “up to 70% homologous” in the claims. This rejection is respectfully traversed.

As explained in the previous response support for the phrase “up to 70% homologous” is found on page 9, lines 7 and 11 of the specification. In addition, on pages 10 and 11 of the specification, it is explained that sequence variations to the extent of 30% may not affect the function of the TAM and TIM. Reference is made to US patent application 09/263,692 now US patent 6,639,065.

Reference was also made to issued US patents which include claims that include phrases pertaining to a sequence of DNA or the like and a sequence that has a certain percentage of homology with the specified sequence.

However, although it is the position that claims 1 and 3-10 meet the written description requirement of 35 USC 112, first paragraph, to expedite prosecution the phrase “up to 70% homology” has been deleted from claims 1 and 10.

Therefore, it is respectfully requested that this rejection be withdrawn.

According to the Office Action, claims 1 and 3-10 are rejected under 35 USC 102(b) as being anticipated by Sawant et al. (*Theor. Appl. Genet.* 2001, Vol. 102, pages 635-644). This is respectfully traversed.

As stated in the previous response, anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *In re Paulsen*, 30 F.3d 1475, 31 USPQ 1671 (Fed. Cir. 1994). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

Claims 1 and 10 have been amended to define that there is a TIM on both sides of the TAM and the Examiner’s attention is drawn to Examples 3 to 6 of this application. This

bidirectional promoter is not disclosed in Sawant et al. (Theor. Appl. Genet. 2001, Vol. 102, pages 635-644) and thus the claims are not anticipated by the cited reference.

Therefore, it is respectfully requested that this rejection be withdrawn.

According to the Office Action, claims 1-10 are rejected under 35 USC 102(3) as being anticipated by Tuli et al. (US patent 6,639,065) as evidenced by pUC19. This is respectfully traversed.

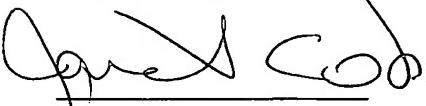
As stated above, Claims 1 and 10 have been amended to define that there is a TIM on both sides of the TAM. This bidirectional promoter is not disclosed in the ‘065 patent and thus the claims are not anticipated by the cited reference. The Examiner’s attention is drawn to the paragraph bridging columns 8 and 9 of the patent where it is stated that the domains or their combinations can act in co-ordination with each other either in the sense or in the antisense direction. This disclosure refers to one side or the other, not both.

Therefore, it is respectfully requested that the rejection be withdrawn.

All rights to file one or more divisional applications claiming subject matter described and not presently claimed in this application are preserved.

Accordingly, it is submitted that the present application is in condition for allowance and favorable consideration is respectfully requested.

Respectfully submitted,



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